

EXHIBIT M

Michael Anderson, Volume 1, 7/9/2004

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
)
FLEMING COMPANIES, INC.;) No. 03-10945 (MFW)
et al.,) VOLUME I
Debtors.)

Deposition of MICHAEL ANDERSON, taken
at 209 S.W. Oak Street, Suite 500,
Portland, Oregon, commencing 1:08 p.m.,
Friday, July 9, 2004, before Phillip A.
Rader, a Notary Public.

PAGES 1 - 37

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22

23 ALSO PRESENT:

24

25 MICHAEL GRAMZA, VIDEOGRAPHER

9

1 agreement between Fleming and NTI? 13:15:48
2 A. That's my understanding. 13:15:51
3 Q. Okay. And who is -- turning to page 8, who 13:15:52
4 is Mr. -- it looks like John Dethman? 13:15:59
5 A. John Dethman, he's our Vice President of 13:16:03
6 Finance and Operations. 13:16:07
7 Q. And he's authorized to enter into these kind 13:16:08
8 of agreements for NTI? 13:16:12
9 A. Yes, he is. 13:16:13
10 Q. And that's his signature? You recognize 13:16:13
11 that? 13:16:15
12 A. Yes. Yes, it is. 13:16:16
13 Q. Do you presently understand that NTI pulled 13:16:17
14 out of the agreement of Exhibit 3? 13:16:20
15 A. Yes. 13:16:21
16 Q. And do you understand that the agreement was 13:16:21
17 made on or about June -- well, it's dated by its 13:16:25
18 terms June 9. 13:16:32
19 Do you see that on the first page? 13:16:33
20 A. Yes. 13:16:34
21 Q. Okay. Maybe we'll take that up with Mr. 13:16:36
22 Stevens. 13:16:41
23 As president and primary founder of NTI, 13:16:42
24 do you know why NTI pulled out of the Consulting 13:16:51
25 Engagement Agreement with Fleming? 13:16:53

1 A. Based on business reasons, we thought it 13:16:56
2 would be prudent to withdraw from the engagement. 13:16:58

3 Q. Can you elaborate on those business reasons. 13:17:01
4 What were those business reasons? 13:17:04

5 A. The primary ones were that we had more 13:17:05
6 consulting work than we had had in years, so we were 13:17:08
7 stretched pretty thin. 13:17:11

8 And the other reason was that we 13:17:15
9 received a call from Mr. Hogan -- or I received a 13:17:18
10 call late one evening from Mr. Hogan who advised me 13:17:21
11 that there was a potential for RICO lawsuit. 13:17:26

12 Q. Against NTI? 13:17:29

13 A. That was my understanding. 13:17:32

14 MR. CAPOZZOLA: I'd like to mark as 13:17:33
15 Exhibit 4 -- and I'm sorry, I only have one copy of 13:17:34
16 this, so maybe we can share it -- what appears to be 13:17:38
17 a copy with a Post-It note about two inches by two 13:17:42
18 inches. 13:17:46

19 (Whereupon, a copy of a Post-It note was 13:17:46
20 marked Exhibit 4 for identification.) 13:17:46

21 BY MR. CAPOZZOLA: 13:17:46

22 Q. Do you recognize that note, Mr. Anderson? 13:17:46

23 A. Yes. That's a note that I made relative to 13:17:49
24 the conversation with Mr. Hogan. 13:17:53

25 MR. KETTERLING: Mr. Hogan, this is 13:17:55

1 Keith Ketterling. Just for your information, this 13:17:56
2 is the note that I e-mailed to you earlier this 13:17:59
3 morning by PDF. 13:18:02
4 MR. HOGAN: I appreciate that. I have 13:18:04
5 it in front of me. It has a little "W" sort of 13:18:06
6 blaze in the upper left corner? 13:18:09
7 MR. KETTERLING: Exactly. 13:18:12
8 MR. HOGAN: Thank you. 13:18:12
9 BY MR. CAPOZZOLA: 13:18:13
10 Q. Why don't you just briefly walk us through 13:18:14
11 these notes as they appear on the page and what you 13:18:16
12 were thinking when you wrote them down. 13:18:19
13 A. Well, I was -- I was working late one evening 13:18:21
14 at NTI and I was the only employee there. And the 13:18:24
15 phone rang, and I answered it. And I think it was 13:18:31
16 about seven or 7:30, but I didn't record the time. 13:18:31
17 And a gentleman identified him -- the caller 13:18:33
18 identified himself as Mr. Hogan, who he said he was 13:18:36
19 an attorney and he was calling me from Hawaii. And 13:18:39
20 he mentioned to me that he had reason to believe 13:18:43
21 that we were involved in a consulting engagement 13:18:46
22 involving a company named Fleming. And he asked me 13:18:49
23 if that was -- if that was true, as I recall. 13:18:55
24 And I really didn't know, because I 13:18:58
25 don't involve myself with the consulting cases on an 13:18:59

1 ongoing basis. So I basically told him that I 13:19:02
2 didn't have any specific knowledge of that. And he 13:19:06
3 indicated that he was calling to advise that there 13:19:10
4 had been -- and I'm going by my memory here -- but 13:19:17
5 there had been some kind of a lawsuit or an action 13:19:22
6 filed involving a RICO violation against Guidance 13:19:26
7 Software, and he did not want us involved in a 13:19:29
8 similar action or something to that effect. 13:19:32

9 Q. The note, "talk to John," what does that 13:19:33
10 mean? 13:19:36

11 A. Well, he was asking me, as I recall, specific 13:19:37
12 things about the engagement. And I told him that I 13:19:40
13 really didn't have any knowledge of the -- I didn't 13:19:45
14 even know if this was a client at that point in 13:19:48
15 time. And I advised him that John Dethman was the 13:19:50
16 person that managed that division and that he would 13:19:54
17 more likely know. 13:19:58

18 And as I recall at that time, Mr. Hogan 13:19:59
19 referenced a document -- it may have been a copy of 13:20:00
20 the engagement letter or something -- and he said, 13:20:03
21 oh, yes, I see his name here, or signature, or 13:20:06
22 something to that effect. 13:20:09

23 Q. And then "Wayne Berry Software Development, 13:20:10
24 DEV," as it appears, what caused you to write that, 13:20:13
25 if you recall? 13:20:17

1 A. Mr. Hogan indicated that this involved -- I 13:20:18
2 think he was trying to refresh my memory about the 13:20:21
3 engagement or something. But I don't know. But he 13:20:23
4 mentioned that he represented Wayne Berry and that 13:20:26
5 he was a software developer and he was involved in 13:20:29
6 the case. I believe Mr. Hogan said that he 13:20:32
7 represented him in the action. 13:20:34
8 Q. Okay. And then the word "Fleming" appears. 13:20:35
9 Do you recall why you wrote that? 13:20:38
10 A. I think I was asking him for information 13:20:39
11 about what -- you know, what the -- from a conflicts 13:20:46
12 check standpoint, you know, the case name or 13:20:48
13 something. And so I wrote down the name "Fleming." 13:20:50
14 And as I recall, I think he suggested that that was 13:20:53
15 our client in the engagement matter. 13:20:57
16 Q. Then you have the name "Sean," and a phone 13:20:59
17 number there: 503-201-5010. 13:21:04
18 What caused you to write that, if you 13:21:07
19 recall? 13:21:08
20 A. That was written after the -- after the 13:21:09
21 conversation. And because I knew nothing about this 13:21:11
22 engagement or if it was even an actual case that was 13:21:13
23 active with NTI, I called -- I believe John Dethman 13:21:17
24 -- and I called Scott Stevens -- and I can't 13:21:23
25 remember which of them got back to me. But they 13:21:27

REPORTER'S CERTIFICATE

I, PHILLIP A. RADER, do hereby certify:

That the foregoing deposition testimony of
MICHAEL ANDERSON was taken before me at the time and
place therein set forth, at which time the witness,
was placed under oath and was sworn by me to tell the
truth, the whole truth, and nothing but the truth;

That the testimony of the witness and all
objections made by counsel at the time of the
examination were transcribed under my direction and
supervision, and that the foregoing pages contain a
full, true and accurate record of all proceedings and
testimony to the best of my skill and ability.

I further certify that I am neither counsel for
any party to said action, nor am I related to any
party to said action, nor am I in any way interested
in the outcome thereof.

IN WITNESS WHEREOF, I have subscribed my name
this 15th day of July, 2004.

Phillip Rader

PHILLIP A. RADER